

REMARKS

The foregoing Amendment and remarks which follow are responsive to the Office Action of July 12, 2005, in relation to the above-identified patent application. In that Office Action, the Examiner indicated that the application appears to claim subject matter that was disclosed in prior application number PCT/GB03/00758 and application number UK 0204117.6, respectively filed on February 21, 2003 and February 21, 2002. The Examiner indicated that reference to the prior applications must be inserted as the first sentences of the specification if Applicant intends to rely upon the filing date of such prior applications.

The Examiner also indicated that the information discloser statement (IDS) which was filed on November 12, 2004 fails to comply with 37 CFR 1.98(a)(2) which requires a legible copy of each cited foreign patent document. The Examiner noted that the information referred to in the IDS had not been considered because no copy of the references was provided.

The Examiner further indicated that the drawings were objected to as failing to comply with 37 CFR 1.84(p)(5) for failure to include reference numerals mentioned in the description for the pressure feed 28. The Examiner therefore requested correction of the drawings. In the Office Action, the Examiner also indicated that the specification be reformatted to include sections headings (e.g., CROSS REFERENCE TO RELATED APPLICATIONS, STATEMENT RE: FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT, etc.) at the appropriate places throughout the disclosure.

The Examiner objected to Claim 1 due to informalities and requested correction thereof. Finally, the Examiner rejected Claim 1 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 6,443,154 issued to Jalde et al. (hereinafter “JALDE”). (Office Action, Page 2-6).

Priority Claim

In the Office Action, the Examiner noted that the application appeared to claim subject matter disclosed in prior application numbers PCT/GB03/00758 and UK 0204117.6 and that reference to such prior applications must be inserted in the application in order to allow Applicant to rely on the earlier filing date of the prior applications.

By this Amendment, Applicant has amended the specification to include a cross-reference to such related patent applications. Such amendments are provided for in the section of this paper entitled IN THE SPECIFICATION. As such, Applicant respectfully submits that the deficiency regarding lack of priority claim has now been rectified.

Information Disclosure Statement

The Examiner further indicated that the Information Disclosure Statement failed to comply with 37 CFR 1.98(a)(2) in that a legible copy is required for each of the following references: GB 2098491, FR 2506164 and JP 57195466.

With this Amendment, Applicant submits the above-mentioned foreign patent documents in their entirety along with an English-language abstract for each. As such, Applicant respectfully submits that the deficiency associated with the Information Disclosure Statement is now overcome.

Objection to the Drawings

The Examiner indicated that the drawings failed to comply with 37 CFR 1.84(p)(5) due to a failure to include reference numbers mentioned in the description regarding the pressure feed 28.

The Examiner requested appropriate correction of the drawing sheets.

By this Amendment, Applicant has corrected such informality by submitting an amended drawing sheet which includes Figure 3 and which adds reference numeral 28 to the pressure feed which is depicted in Figure 3 as a curvilinear line ending in an arrow and which extends from tube 24 at 7 centimeters from the end of the gas inlet channel 8. As such, Applicant submits that the objection to the drawings is now believed to be overcome.

Objection to the Specification

In the Office Action, the Examiner objected to the format of the specification and suggested that headings be included at appropriate places throughout the disclosure.

By this Amendment, Applicant has corrected such informality in the format of the specification by including the suggested headings and text in the appropriate places throughout the disclosure. More specifically, Applicant has amended the specification to include headings for TITLE OF THE INVENTION, STATEMENT RE: FEDERALLY SPONSORED RESEARCH/DEVELOPMENT, BACKGROUND OF THE INVENTION, BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWINGS, DETAILED DESCRIPTION OF THE INVENTION, and ABSTRACT. As such, Applicant submits that the deficiency associated with the format of the specification has now been rectified.

Objection to Claim 1 - Informality

In the Office Action, the Examiner objected to Claim 1 because of certain informalities. More specifically, the Examiner indicated that certain elements recited in lines 4 and 5 of Claim 1

lacked antecedent basis and requested appropriate correction.

By this Amendment, Applicant has corrected such informalities associated with Claim 1 by revising the claim language to include appropriate antecedent basis. As such, Applicant submits that the objection to Claim 1 is now overcome.

Rejection of Claim 1 under 35 U.S.C. §102(e)

In the Office Action, Claim 1 was rejected under 35 U.S.C. §102(e) as being anticipated by JALDE. More particularly, the Examiner indicated that the breathing device illustrated in the drawings and disclosed in the specification of JALDE anticipates independent Claim 1 of the application.

As understood, JALDE discloses an apparatus for supplying breathing gas to a patient. The apparatus has a gas supply for generating a flow of gas there through during inspiration and expiration phases of the patient breathing cycle. The apparatus includes a gas supply with a fan assembly fluidly connected to the apparatus via a delivery conduit. The apparatus includes an inspiration line through which a flow of the breathing gas from the supply can pass. The apparatus also includes an expiration line through which expiration gas from the patient can flow.

Importantly, the apparatus of JALDE for directing the flow of gas from the supply along a first flow path during inspiration phase of the breathing cycle. The flow controller is selectively moveable to direct the flow of gas from the supply along a second flow path during the expiration phase of the breathing cycle in order to enhance removal of expiration gas from the patient.

Applicant wishes to emphasize that JALDE is understood to disclose a “patient ventilator which has a **breathing gas supply 1 ... and a flow controller 4.**” (Col. 2; Lines 12-16). More

specifically **JALDE** is understood to require the flow controller in order to direct the flow of gas within the apparatus. For example, “the flow of gas from the fan to [is] divided into two parts within the flow controller 4; one path leads gas from the inlet 5 to the outlet 8; and one path leads gas from the inlet 5 to the common inlet/outlet 6.” (Figures 1-3; Col. 2, Lines 26-29).

Applicant therefore wishes to emphasize that **JALDE** necessarily requires mechanical means (i.e. the flow controller 4) in order to control the flow of gas during the inspiration and expiration phases of the breathing cycle. For example, the flow controller includes “a vane deflector, rotatable in the flow path of the gas from the supply, for selectively coupling the flow of the inspiration or expiration lines.” (Col. 1, Lines 45-47). Selective control of the flow of gas within the apparatus is effectuated “during an inspiration phase of the breathing cycle [wherein] gas from the inlet 5 is diverted to the common inlet/outlet 6 to be subsequently inspired. To achieve this, the vane 10 is rotated so that its first section 14 is arranged to provide a flow path for the gas from the inlet 5 to the common inlet/outlet 6 (as illustrated by the solid construction of vane 10 in Figure 2a).” (Figure 2a; Col. 2, Lines 57-60).

JALDE further discloses that the flow controller 4 allows for manipulation of the flow of gas “during an expiration phase [wherein] the vane 10 is rotated so that most or all of the gas from the inlet 5 can flow along a path directly to the outlet 8 in a direction across a venturi outlet 17 for expiration gas flowing into the controller 4 through the common inlet/outlet 6.” (Col. 3, Lines 21-26). Importantly, “the first section 14 of the vane 10 effectively prevents gas flow from the inlet 5 to the common inlet/outlet 6” during the expiration phase. (Fig. 2b; Col. 3, Lines 27-28).

In contrast, the present application discloses a breathing device wherein the control of the gas flow therewithin is effectuated solely through the internal geometry of the gas inlet channel 8 (the

functional equivalent of the delivery conduit 3 of JALDE) relative to the breathing channel 2 (the functional equivalent of the breathing tube 7 of JALDE). More specifically, as can be seen in Figures 2a-2c, **effective control of the flow of the gas in Applicant's invention is effectuated solely due to the lateral offset of the gas inlet channel 3 with respect to the breathing channel 7.**

Applicant respectfully submits that JALDE is silent with regard to teaching an apparatus for supplying a breathing gas to a patient wherein a flow of supply gas therewithin is effectuated solely through the internal geometry of the gas inlet channel relative to the breathing channel. More specifically, nowhere in JALDE is there disclosed either in the drawings or the specification a means to "introduce gas into said breathing channel such that ... a positive pressure may be maintained in the breathing channel" (as is recited in amended Claim 1 of the application) without the use of a flow controller 4 of JALDE.

Therefore, Applicant respectfully submits that JALDE teaches away from the breathing device disclosed in the Applicant's invention. As such, amended independent Claim 1 of the application is believed to distinguish over JALDE such that the §102(e) rejection advanced by the Examiner in relation thereto should be withdrawn. In addition, new independent Claim 35 which is similar in scope to Claim 1, but a narrower version thereof, is also believed to distinguish over JALDE. As such, amended independent Claim 1 as well as new independent Claim 35 are now believed to be in condition for allowance. Likewise, all claims depending therefrom, namely, dependent Claim 18-34 are also believed to be in condition for allowance.

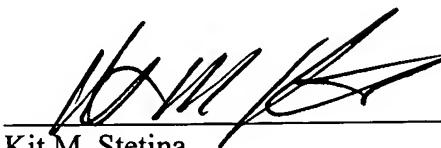
In view of the foregoing, the present application is believed to be in condition for allowance. Entry of the amendment and issuance of a Notice of Allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the application, please

contact Applicant's representative at the telephone number listed below. If any additional fees are required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

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